

**CONSOLIDATED
COOPERATIVE ENFORCEMENT AGREEMENT**

BETWEEN

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

AND

STATE OF MONTANA

**DEPARTMENT OF
ENVIRONMENTAL QUALITY**

September 2000

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I. PURPOSE

The U.S. Environmental Protection Agency (EPA) and the Montana Department of Environmental Quality (DEQ) have similar duties in the protection of human health and of environmental resources. Each is mandated to implement laws and regulations to protect human health and the environment. In passing the federal environmental laws, Congress crafted roles for the EPA and each of the States that choose to implement environmental programs. There is a preference reflected in these statutes that the primary implementors and enforcers of these laws should be state agencies that receive federal approval from EPA, but it is also clear that EPA retains its independent enforcement authority and an important role of maintaining national consistency. In States that are not fully approved, EPA generally retains the role of primary implementor of the non-approved program requirements.

The purpose of this Agreement is to describe the interaction between DEQ and EPA in enforcement activities in environmental programs. Since both DEQ and EPA have certain responsibilities for effective implementation and enforcement of environmental laws in Montana, this Agreement is deemed necessary to ensure a high degree of coordination between the two agencies.

II. SCOPE

This Agreement describes the roles of DEQ and EPA relative to civil judicial and administrative (i.e., not criminal) enforcement activities in the five approved environmental programs in Montana shown in Table I. It establishes the routine communication and coordination between the agencies, describes operating goals for timely and appropriate state enforcement, describes EPA's oversight role in ensuring proper and effective enforcement in Montana, and incorporates processes to resolve any disagreements that may arise between the agencies.

This Agreement does not address activities such as the planning, scheduling, or priority-setting for compliance monitoring activities of DEQ or EPA that may occur prior to the identification of a violation at a facility. Agreements in these areas are dealt with in the Performance Partnership Agreements negotiated between the agencies. Except for Section IV, this Agreement does not address activities performed by DEQ and EPA outside the scope of the approved programs listed in Table I; e.g., EPA's enforcement under toxic substance and emergency planning statutes, and DEQ's enforcement pursuant to Montana's, junk vehicle and mine reclamation statutes.

This Agreement does not apply to violations occurring within Indian country.

Table I. Approved State Environmental Protection Programs Subject to this Agreement

Approved Program	Federal Authorizing Statutes	State Authorizing Statutes
Air Quality Management	Clean Air Act 42 U.S.C., 7401, <i>et seq.</i>	Clean Air Act Title 75, Chapter 2, Parts 1-4 Asbestos Control Act Title 75, Chapter 2, Part 5
Hazardous Waste Management	Resource Conservation & Recovery Act (Subtitle C) 42 U.S.C., 6901, <i>et seq.</i>	Hazardous Waste Act Title 75, Chapter 10, Part 4
Underground Storage Tank Management	Resource Conservation & Recovery Act (Subtitle I) 42 U.S.C., 6991, <i>et seq.</i>	Underground Storage Tank Act Title 75, Chapter 11, Part 5 Underground Storage Tank Installer Licensing & Permitting Act Title 75, Chapter 11, Part 2
National Pollutant Discharge Elimination System	Clean Water Act 33 U.S.C. 1251, <i>et seq.</i>	Water Quality Act Title 75, Chapter 5, Parts 1-7
Public Water System Supervision	Safe Drinking Water Act 42 U.S.C. 300g, <i>et seq.</i>	Public Water Supply Act Title 75, Chapter 6, Part 1

III. DEFINITION OF TERMS

As used in this Agreement the following terms shall have the meanings as herein defined:

Appropriate -- means that any enforcement action taken by an agency should be effective in causing a prompt return to compliance and in deterring future noncompliance. The enforcement actions taken by an agency should address the nature, extent and gravity of the violation(s) identified, and other pertinent factors such as compliance history of the violator, economic gain accrued by the violator from the noncompliance, and degree of cooperation shown to the agency.

Approval -- means the federal authorization, program approval, or primacy granted to Montana to administer environmental programs.

Compliance Assistance -- means the variety of actions that DEQ may take to help a regulated entity come into compliance, or avoid going out of compliance. Compliance assistance includes the work DEQ programs conduct to resolve a

violation before submitting an enforcement request to initiate an enforcement action. These activities may range from providing outreach such as workshops, seminars, compliance guides, and ombudsman services, to conducting compliance activities such as inspections, data evaluation, summary reports, and sending warning or violation letters. Although warning and violation letters are used to provide compliance assistance, they are also documents used in enforcement actions.

Determination Date -- means the date that a violation is confirmed to exist and categorized as either a significant violation or a minor violation by either agency. This date may be the same as the discovery date but may occur some number of days subsequent to an inspection (i.e., the discovery date) due to inherent delays such as awaiting the results of laboratory analysis, researching applicability of regulations to specific site conditions, and/or completion of a written inspection report.

Discovery Date -- means the date of the inspection, record review, receipt of monitoring information, or other compliance evaluation activity during which a potential violation is detected.

Enforcement Action -- means the responses specifically provided under the law to redress violations and to force compliance by regulated entities that have significant or repeat violations of environmental requirements or have demonstrated an unwillingness to voluntarily come into full compliance with the law in a timely manner. It includes civil judicial actions, unilateral administrative orders, administrative penalty orders, or orders on consent.

Minor Violator/Violation (MV) -- means that general category of violators/violations not specifically included within the Significant Violator/Violation (SV) category as defined. It includes violators/violations posing a relatively low level of threat to environmental resources or to human health.

Significant Violator/Violation (SV) -- means that the severity of the identified violation(s) meet a threshold triggering specific enforcement actions and a higher level of agency interest. Threshold criteria for SVs are program-specific and are contained in Appendix I. The terms high priority violation/violator (HPV) and significant noncompliance/noncomplier (SNC) are considered synonymous to SV.

Supplemental Environmental Project (SEP) -- means an environmentally beneficial project which a violator undertakes, but is not otherwise legally required to perform, as part of settlement of an enforcement action.

Timely -- means that the lead agency's enforcement response to detected violations occurs within the timeframes described in this Agreement and its appendices.

Violation Letter (VL) – means a letter sent to notify a regulated entity that DEQ believes a Significant Violation (SV) has occurred. VLs are required to be sent under some state laws prior to the assessment of an administrative penalty and are usually the first step in an enforcement action. A VL will typically contain: (1) a description of the law, rule, permit requirement, etc. violated, (2) a description of the evidence that verifies a violation occurred, (3) a description of the corrective actions required to come into compliance, (4) a schedule by which corrective actions must be completed, (5) an identification of the potential penalties for noncompliance, (6) notification that the VL can be used to demonstrate a history of violation and may result in an increase in any future penalty calculation, and (7) an invitation to meet with the agency informally to discuss the violation and/or the required corrective action.

Warning Letter (WL) – means a letter sent to a regulated entity to advise that DEQ believes a minor violation appears to exist or that, depending on likely circumstances, a violation may occur in the future. WLs are usually sent to provide compliance assistance and if the conditions contained in a WL are satisfied, a subsequent enforcement action is not likely. A warning letter may contain generally the same elements as would a violation letter; e.g., identification of requirements violated or potentially violated, corrective actions or information required, a compliance schedule, and the potential consequences for failure to correct or prevent the violation.

IV. COMMUNICATION AND SHARING OF INFORMATION

A. PRIMARY CONTACTS

The directors of DEQ and the EPA Montana Office are the primary contacts for all formal information sharing under this Agreement. Notice to the director of the Montana EPA Office or his designee is sufficient notice to EPA in all circumstances covered under this Agreement. Notice to the director of the Montana DEQ or his designee is sufficient notice to DEQ in all circumstances covered under this Agreement. Each agency reserves its right to communicate directly with other government officials as necessary to discuss relevant enforcement matters. However, the primary contacts will provide each other a prior courtesy notice of the content of the pending communication.

B. MEETINGS

The directors of DEQ and the EPA Montana Office (and/or their designees and relevant staff) will meet at least once every two months to discuss pending, active and recently closed enforcement actions, as well as pertinent compliance information. The purpose of these routine meetings is to exchange information

regarding the basis for and status of particular enforcement actions; to exchange assistance, advice, and concerns regarding these actions; and to discuss potential referrals and joint enforcement. In addition, other EPA and DEQ representatives may meet periodically to discuss relevant compliance and enforcement issues.

C. CONSULTATION PROTOCOL

The agencies recognize that early and definitive communication is important for effective enforcement.

Occasionally, depending upon varying circumstances, DEQ may determine that an SV does not merit an enforcement action or penalty. If DEQ decides not to initiate an enforcement action or assess a penalty, and EPA disagrees with the decision, the differences will be elevated immediately to the primary contacts.

When DEQ recognizes that a state enforcement action may conflict with EPA enforcement policies and procedures, (e.g., where penalty authorities may be vastly different) it will immediately elevate the issue to the primary contacts.

When EPA detects a violation or determines that a federal enforcement action is appropriate to address a violation, EPA will immediately elevate the issue to the primary contacts. EPA will inform the DEQ primary contact of its intent to proceed with an enforcement action and will notify DEQ's primary contact prior to issuance of the enforcement action.

D. CONFIDENTIALITY OF ENFORCEMENT INFORMATION

Any information obtained or used in the administration of the Montana programs shall be available to EPA upon request. If the information is determined enforcement confidential by DEQ or has been submitted to DEQ under a claim of confidentiality, DEQ must notify EPA of the DEQ determination or the claim when DEQ provides the information. EPA shall treat such information in accordance with 40 CFR Part 2, and all other applicable regulations, such as 40 CFR Section 122.7 for information relating to NPDES permits and/or discharges.

EPA may furnish to DEQ enforcement information in its files in accordance with 40 CFR Part 2 with the exception of Confidential Business Information. For information for which EPA is processing a claim of confidentiality pursuant to 40 CFR Part 2 and for information that EPA has determined is confidential pursuant to 40 CFR Part 2, EPA may, before furnishing the information, require that DEQ provide assurance that it will keep the information confidential.

E. COPIES OF ENFORCEMENT DOCUMENTS

DEQ agrees to routinely provide EPA with copies of issued demand letters, final penalty calculations, administrative orders, settlement agreements, and judicial complaints that are filed in court. EPA agrees to routinely provide DEQ with copies of issued demand letters, administrative orders, settlement agreements, and judicial complaints that are filed in court. These documents will normally be provided to the other agency within seven days of issuance. Either agency may request a copy of any pertinent enforcement or compliance document not specifically included in the routine exchange of copies outlined in this Agreement. Such requests will normally be responded to within seven days.

V. DEQ ENFORCEMENT

As set forth in their approval agreements, the EPA and DEQ intend that the agency primarily responsible for responding to detected violations in Montana will be DEQ. DEQ agrees to respond in a timely and appropriate manner to violations of state laws, rules, permits, administrative or judicial orders, consent decrees, or other applicable program requirements. DEQ agrees to maintain procedures and capabilities to receive and respond to citizen complaints and/or citizen information regarding possible instances of noncompliance.

DEQ will typically refer to EPA suspected violations that are primarily interstate or multi-state in nature, violations of program requirements not included in DEQ program approvals, or other violations for which an EPA enforcement action is more suitable than a state action. Referrals to EPA will normally be transmitted in writing (see Section IV).

VI. EPA ENFORCEMENT

The communication protocols outlined in this Agreement are designed to minimize conflicts that may arise in the exercise of EPA's enforcement authority. Pursuant to the provisions of federal law, EPA may take enforcement actions in Montana in response to violations identified in either approved or non-approved programs. The following examples are areas where it is most likely that EPA will conduct enforcement:

1. EPA may take an enforcement action for violations that are referred by DEQ to EPA.

2. EPA may take an enforcement action for violations identified in programs implemented by EPA in the absence of an approved program, or where a federal action has already been issued (e.g., a federal consent decree) and a violation is identified.

3. EPA may take an enforcement action where it determines that a DEQ action is inconsistent with this Agreement.

4. EPA may take an enforcement action for violations of approved program requirements that are interstate or multi-state in nature and that EPA and DEQ agree are better addressed by EPA.

5. EPA may take an enforcement action where a violation has been identified through a national initiative or national case work, or where the action is interstate in nature or will set a national precedent. EPA will typically invite DEQ to participate in such national activities.

6. EPA may initiate an enforcement action where a violation poses an imminent or substantial endangerment.

Some statutes require that EPA notify the violator and the State when EPA finds a violation in an approved program. EPA reserves its authority to conduct enforcement as authorized by federal law, and nothing in this Agreement shall place any limitations or conditions upon EPA's ability to conduct such enforcement.

VII. TIMELY AND APPROPRIATE RESPONSE

EPA and DEQ each commit to respond to detected violations with actions that are both timely and appropriate. DEQ will make Significant Violator (SV) determinations in accordance with Appendix I and will respond to SVs in accordance with the criteria set forth below. EPA will make SV determinations and will respond to SVs in accordance with the criteria for timely and appropriate enforcement set forth in its published guidance documents for each of the environmental programs (refer to Appendix II). The agencies realize that these criteria may not be met in every case and that judgment on what constitutes a timely and appropriate response must ultimately be case-specific. If the response to an SV deviates appreciably from these criteria, the primary contact for the lead agency will inform the other agency's primary contact during the meetings held in accordance with Section IV.

A. APPROPRIATENESS OF RESPONSES

It is the expectation of both agencies that Significant Violators (SVs) will typically be addressed with an **Enforcement Action**, including a penalty. The enforcement action initiates an administrative or judicial process that results in an enforceable agreement or order that will include appropriate injunctive relief and penalty. In some cases the enforcing agency may seek an injunction or temporary restraining order from the court of jurisdiction.

For Minor Violators (MVs), DEQ Compliance Assistance will typically be considered the appropriate response. The agencies agree that appropriate compliance assistance will normally include a recitation of the violations and a deadline for returning the facility to compliance with all substantive and procedural requirements of applicable statutes, rules, and permits. The compliance assistance should require that violations be resolved as expeditiously as possible. A facility that fails to return to compliance following a compliance assistance action or is found to have repeat violations is subject to being reclassified as an SV. If reclassified as an SV, an appropriate follow-up enforcement action will be developed.

The penalty policies and/or administrative rules utilized by the agencies to calculate penalty amounts incorporate an evaluation of both economic benefit and gravity of the violation. It is the expectation of the agencies that an economic benefit component of a penalty will be collected in any enforcement action. The agencies recognize that recovery of the full economic benefit of noncompliance plus the gravity component of a penalty may not be possible in every case. A payment schedule or a lower penalty amount may be appropriate if the violator demonstrates an inability to pay the full calculated penalty amount.

EPA and DEQ may allow the use of Supplemental Environmental Projects in the settlement of an enforcement action when appropriate. If EPA utilizes a SEP in settlement of an enforcement action, it will follow provisions of the *EPA Supplemental Environmental Projects Policy*, April 10, 1998. DEQ will utilize the EPA SEP policy as general guidance, but the parties recognize that DEQ is not bound by the specific provisions of the policy.

EPA will follow their *Policy on Compliance Incentives for Small Businesses*, May 20, 1996 and *Policy on Flexible State Enforcement Responses to Small Community Violations*, November 1995 when applicable. DEQ will refer to these documents only as general guidance.

B. TIMELINESS OF RESPONSES

It is the expectation of both agencies that enforcement will be conducted in a timely manner. Both agencies agree that effective enforcement is conducted under predictable timeframes. Both agencies recognize that a timely and appropriate response to SVs is critical to maintain compliance. This Agreement establishes the goals for what is considered timely and appropriate enforcement by DEQ.

Table II lists the timeframes and milestones for DEQ enforcement activities. The initial milestone for enforcement is termed the **Discovery Date**. The discovery date is the day that a violation is originally detected or reported to the agency. DEQ's timeframes for providing compliance assistance in response to MVs are discussed for each program in Appendix I. EPA will follow the timeframes

established within its most recent enforcement policy guidance document for each environmental program (refer to Appendix II for the listing of these documents). When one agency refers a violation to the other agency, the date of referral will be considered the Discovery Date.

The next tracking point is termed the **Determination Date**. The Determination Date is the date by which DEQ has evaluated the violation and categorized it as significant or minor. If the violation is a significant violation (SV), DEQ will send a Violation Letter (VL) to the violator on or before the Determination Date.

This agreement establishes 45 days as the time period between the Discovery Date and the Determination Date. Both agencies recognize that complicating factors may delay the Determination Date. A longer period may be necessary in situations where additional monitoring and/or laboratory testing is required, where complex legal interpretations are involved, or where staff resources are limited.

Table II. Description of Milestones and Target Timeframes for DEQ Enforcement Actions

Days	Milestone	Activity
0	Discovery Date	Violation is detected or reported
0-45		Evaluate and categorize the violation as a Significant Violation or Minor Violation
45	Determination Date	Send Violation Letter for SVs; Warning Letter for MVs
45-90		Monitor compliance, evaluate enforcement options
90	Enforcement Request	Submit enforcement request for SVs
90-210		Draft enforcement action and calculate penalty
210	Formal Action	Issue enforcement action
210-330		Settlement negotiations
330	Case Settlement	Goal for case settlement

During the next 45-day period (from day 45 to day 90), DEQ will monitor compliance with any requirements specified in a VL and evaluate the facts surrounding the violation. DEQ may also meet informally with the violator to discuss the violator's response to the VL. DEQ will evaluate the situation and determine if an

enforcement action and penalty are justified. If the evaluation determines that an enforcement action is warranted, an **Enforcement Request** will be prepared and submitted to DEQ's Enforcement Division (ENFD) for processing on or before day 90.

ENFD will have 120 days (from day 90 to day 210) to develop and write an enforcement document, calculate a penalty and issue an enforcement action. This milestone is termed the **Formal Action Date**. On the Formal Action Date, DEQ will either issue an administrative order, mail a demand letter, or file a judicial complaint. Settlement negotiations will generally begin after the Formal Action Date.

The goal of DEQ is to conduct enforcement as expeditiously as possible and to meet the timeframes specified in this Agreement. However, both agencies recognize that because of many potential delaying factors, some of which are outside the control of DEQ, stringent adherence to the timeframes may not be realistic in every case. The agencies also acknowledge that timeliness is not the sole indicator of enforcement program performance. If DEQ or EPA deviates from its respective timeframes, an explanation for the delays can be discussed during the meetings described in Section IV and during the oversight process described in Section IX.

VIII. JOINT ENFORCEMENT ACTIONS OR SHARED ROLES

The agencies commit to mutual support where necessary to best utilize enforcement resources and capabilities in producing effective results. DEQ may invite EPA to join in enforcement actions where either state resources, specific expertise, or legal authorities may be lacking.

EPA may request DEQ's assistance in enforcement actions. Such assistance might include the use of DEQ inspectors or others as witnesses, use of DEQ file information in case preparation, involve DEQ in case development or in creative settlement approaches, or in other related enforcement roles. The agencies may jointly enforce any requirement when it is advantageous to do so, but anticipate that joint enforcement will occur infrequently.

IX. OVERSIGHT OF DEQ'S ENFORCEMENT PROGRAM BY EPA

As part of its responsibility to maintain national consistency in implementation of approved federal environmental programs, EPA retains an oversight role regarding DEQ's implementation of enforcement activities in Montana. As described below, EPA will annually evaluate the effectiveness of DEQ's enforcement activities. EPA may also evaluate other relevant information as necessary.

EPA Region VIII will perform systematic, department-wide reviews of DEQ's enforcement activities in the approved environmental programs. These reviews will

be conducted once each year, usually during January or February. Each review will normally consist of a combination of meetings with DEQ staff and managers, file reviews and an analysis of database summaries and DEQ activity reports.

EPA will prepare a draft report of the results of these systematic reviews for DEQ review and comment. If EPA's review concludes that DEQ has not met the timely and/or appropriate enforcement goals of Section VII, the report will describe in detail such deviations (see Section IV for procedures for handling enforcement confidential information). DEQ will evaluate the findings of the draft report and will provide any pertinent corrections, clarifications and comments to EPA within 30 days of receiving the draft report. After reviewing DEQ's comments, EPA will finalize the report and will provide a copy to DEQ. Upon completion of the final report, EPA and DEQ will meet to determine how best to resolve any concerns identified in the report, reallocate EPA resources, and identify action items which may be included in the Performance Partnership Agreement.

X. ENFORCEMENT RESPONSIBILITIES WHERE DEQ HAS LEGAL AUTHORITY BUT NOT APPROVAL

As state and federal laws and programs change, there may exist times when DEQ has legal authority and responsibility to administer environmental requirements, but has not yet received approval from EPA. In these situations, DEQ and EPA each have separate authority to pursue an enforcement action for violations they may discover. Where it is provided by statute, EPA maintains responsibility for implementing and enforcing non-approved provisions. The agencies will seek to reach a mutual understanding as to which agency will have the primary compliance assistance/enforcement role in such circumstances.

XI. PUBLIC NOTIFICATION

DEQ and EPA each agree to routinely issue press releases on enforcement actions taken by their respective agencies. EPA press releases will acknowledge DEQ actions and accomplishments relevant to the case, and DEQ press releases will acknowledge relevant EPA actions and accomplishments. EPA and DEQ may elect to share press release information with each other before the information is released to the media.

XII. EFFECT ON THIRD PARTIES

Nothing in this Agreement shall be construed to constitute a valid defense by regulated entities in violation of any Montana or federal environmental statute, regulation, permit, or order.

XIII. TERMINATION OF PREVIOUS AGREEMENTS

All Cooperative Enforcement Agreements between EPA and DEQ in effect on the effective date of this Agreement are terminated. These Agreements are as follows:

Cooperative Enforcement Agreement Between Montana Department of Health and Environmental Sciences, Air Quality Bureau and U.S. EPA Region VIII, signed by the parties on February 22, 1993 and March 9, 1993.

Cooperative Enforcement Agreement Between U.S. Environmental Protection Agency and State of Montana, Department of Health and Environmental Sciences, Hazardous Waste Programs, signed by the parties on November 30, 1993 and December 28, 1993.

Cooperative Enforcement Agreement Between U.S. Environmental Protection Agency and State of Montana, Department of Health and Environmental Sciences, National Pollutant Discharge Elimination System, signed by the parties on September 20, 1991 and October 8, 1991.

FY 94 Enforcement Agreement Between U.S. Environmental Protection Agency, Region VIII Montana Office and the Montana Department of Health and Environmental Sciences for the Public Water System Supervision Program, signed by the parties on February 2, 1994 and February 7, 1994.

XIV. EFFECTIVE DATE, TERMINATION AND REVISION OF THE AGREEMENT

This Agreement is effective upon signature by both agencies. The agencies agree to annually review this Agreement and at the end of four years determine whether to retain, terminate or modify the Agreement. Either agency may terminate this Agreement at any time by written notification. In the event that this Agreement is terminated, the agencies agree to immediately begin negotiations to replace this Agreement. The agencies reserve the right to modify this Agreement in accordance with its terms without public notice. The appendices to this Agreement may be modified by letter agreement at any time during the four year period.

Mark A. Simonich
Mark A. Simonich, Director
Montana Department of Environmental Quality

9/11/00
Date

Wm Yellowtail
William Yellowtail, Regional Administrator
U.S. Environmental Protection Agency, Region VIII

9/11/00
Date

APPENDIX I - CATEGORIZATION OF VIOLATIONS AND VIOLATORS

A. WASTEWATER DISCHARGE PERMITS

1. Violations by major permittees are subject to listing on the Quarterly Noncompliance Report (QNCR) and to potential SV classification. Pertinent terms and criteria used by EPA to establish the significance of violations/violators and to outline an appropriate enforcement action are summarized as follows:

Reportable Noncompliance (RNC) -- Major permittee violations which fall under Category I (readily quantifiable; serious) or Category II (less readily quantifiable; still of substantial concern) as defined in 40 CFR 123.45 constitute reportable noncompliance. RNCs are reported to the QNCR, but (in the case of permit effluent limit violations) their duration may fall short of designation as SV.

Letter -- A warning letter written to the discharger identifying a permit limit exceedance. It should be issued within 30-60 days after receipt of the Discharge Monitoring Report (DMR). The letter should require the submittal of a response identifying the cause of the violation and the proposed corrective action.

Technical Review Criteria (TRC) -- TRC is a factor by which the average pollutant limit is multiplied to determine the severity of a violation. Violations of average effluent limits which equal or exceed the product of the TRC times the effluent limit are classified as TRC violations. These are segregated into Group I pollutants (inorganic and oxygen demanding pollutants; TRC = 1.4) and Group II pollutants (toxic pollutants; TRC = 1.2). [See 40 CFR Part 123, Appendix A]. If the exceedances for a parameter meet TRC for 2 out of 6 months (i.e., two consecutive reporting quarters), they are considered Significant Violations (SV) and must be reported to the QNCR.

Standard Exceedances -- Violations of an average effluent limit specified for a parameter (those which exceed the permit limit but do not exceed the TRC) for 4 out of 6 months (i.e., two consecutive reporting quarters) are considered Significant Violations (SV) and must be reported to the QNCR. This category of SVs is also referred to as *chronic violations*.

Significant Violation (SV) -- Effluent limit violations which not only fall under Category I or Category II in 40 CFR 123.45, but also fall into the TRC or Standard Exceedance categories for duration in 40 CFR Part 123, Appendix A are classified as SV. Exceedances which meet TRC criteria for 2 out of 6 months and/or meet Standard Exceedance criteria (reportable noncompliance for 4 out of 6 months) are SVs. Other types of violations (e.g., compliance schedule, reporting, violations of enforcement actions, and certain discretionary violations) may also be classified as SV. SVs appear on the Exceptions List after two quarters in the QNCR.

Quarterly Noncompliance Report (QNCR) – All RNC violations are reported to the QNCR. All SV violations are reported to the QNCR. If violations qualify as SVs and have not yet been resolved after 2 quarters, they will appear on the Exceptions List.

Exceptions List – SV violations appearing on the QNCR for two consecutive quarters without a formal enforcement action become part of the Exceptions List. Any discharger appearing on the Exceptions List is a candidate for an appropriate enforcement action in order to obtain compliance.

2. A DEQ Warning Letter is considered the minimum response to any reportable violation (RNC) which will appear on the QNCR. Such response letters are necessary for each month that the DMR shows a violation. A DEQ formal enforcement action which includes a compliance schedule is the appropriate response for Exceptions List violations (those violations which are SV for two consecutive quarters). DEQ will proceed to a Violation Letter when violations first qualify as SV. This flow of violation prioritization leading to an appropriate enforcement action is illustrated below:

Prioritization Status	Min. Appropriate Response	Additional Possible DEQ Response
RNC	Warning Letter	Violation Letter
SV--1st Quarter	Violation Letter	-----
SV--2nd Quarter; Exceptions List	Administrative Order	Judicial Action

3. The parties agree to utilize the following dates in tracking the timeliness of compliance assistance and enforcement actions for identified violations:

a. For DEQ's compliance assistance responses to RNCs, the Discovery Date will be the date of receipt of the DMR, the Determination Date will be within 45 days after receipt of the DMR, and the Warning Letter or Violation Letter will be issued on the Determination Date.

b. For DEQ's enforcement actions against SVs (i.e., those responses to violators which are designated as SV in any calendar quarter), the Discovery Date will be the release date of the QNCR for that calendar quarter, the Determination Date will be within 45 days after the QNCR release, and the Violation Letter will be issued on the Determination Date.

4. DEQ commits to make the SV determinations within 45 days after release of a QNCR and to issue the Violation Letter on or before the Determination Date. In any

situations where this action for an SV will be delayed, DEQ will communicate the delay as set forth in Section VII.

B. PUBLIC WATER SYSTEMS

1. The definition of Significant Violator (or SNC as found in *The Office of Water FY 1994 Program Operating Guidance*, pp. A-3 and A-4) is reproduced in the table below. The definition applies to all community and non-transient, non-community water systems, and also to transient, non-community water systems serving 500 or more persons. A system is an SV from the time it meets one of the criteria in the definition of an SV until an appropriate enforcement action is taken against it or until it returns to compliance.
2. An Exception is a system which was: (a) an SV that has not returned to compliance or was not addressed appropriately or in a timely manner, (b) an SV previously addressed appropriately that fails by more than 60 days to meet a milestone of a compliance schedule, or (c) an SV system addressed by referring the case for an appropriate enforcement action (i.e., civil or criminal judicial action) but which has not been officially filed in court within the specific timeframe. If a system becomes an Exception, it remains both an SV and an Exception until it is appropriately addressed or returns to compliance.
3. For purposes of tracking responses to determine timeliness, the parties will consider the Discovery Date to be the date of receipt of the U.S. EPA SNC/Exceptions Tracking System report for a given calendar quarter.
4. DEQ commits to make the MV/SV determination within 45 days after the Discovery Date and to issue the Warning Letter or Violation Letter on the Determination Date. In any situations where this action for an SV will be delayed, DEQ will communicate the delay as set forth in Section VII.
5. For the purposes of compliance tracking in PWSS, A return to compliance means:
1) for SVs of a microbiological (MCL and/or M/R), turbidity (MCL and/or M/R), or TTHM (M/R) requirement, that there are no months of violation (either MCL or M/R), for the same contaminant which caused the system to become an SV, during the six month period following SV designation; 2) for SVs of a chemical or radiological MCL, conducting analyses that demonstrate that the system no longer exceeds the MCL; and 3) for SVs of a chemical (other than TTHM) or radiological monitoring requirement, conducting the required monitoring and demonstrating that the system does not exceed the MCL.

Significant Violator Definition -- PWSS
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Total Coliform Rule (TCR) MCL

Monthly Monitoring: 4 acute/monthly MCL violations in any 12 consecutive months.
Quarterly Monitoring: 3 acute/monthly MCL violations in any 4 consecutive quarters.
Annual Monitoring: 2 acute/monthly MCL violations in any 2 consecutive periods.

Total Coliform Rule (TCR) M/R

Monthly Monitoring -- In any 12 consecutive months, meeting one of the following criteria:
4 major repeat M/R violations.
4 combined major repeat M/R and MCL violations.
6 combined major repeat M/R, major routine M/R and/or MCL violations.
10 combined major/minor routine/repeat M/R and/or MCL violations.
Quarterly Monitoring -- In any 4 consecutive quarters, meeting one of the following criteria:
3 major repeat M/R violations.
3 major repeat M/R, major routine M/R and/or MCL violations.
Annual Monitoring -- In any 2 consecutive one-year periods, meeting one of the following criteria:
2 major repeat M/R violations.
2 combined major repeat M/R, major routine M/R and/or MCL violations.

Turbidity MCL

Monthly Monitoring: 4 MCL violations in any 12 consecutive months.
Quarterly Monitoring: 2 MCL violations in any 4 consecutive quarters.

Turbidity M/R and Combined M/R and MCL

Monthly Monitoring -- In any 12 consecutive months, having either of the following:
6 major M/R and/or MCL violations.
10 major/minor M/R and/or MCL violations.
Quarterly Monitoring: 3 major M/R and/or MCL violations in any 4 consecutive quarters.
Annual Monitoring: 2 major M/R and/or MCL violations in any 2 consecutive one-year periods.

Chemical/Radiological MCL (excluding Nitrate) -- Exceeds the short-term acceptable risk to health level.

Nitrate MCL -- 10 mg/l.

Chemical/Radiological M/R -- Fails to monitor for, or report the results of, any regulated contaminant for 2 consecutive compliance periods.

Public Notification -- Failure to provide public notification of the violation which caused the system to become an SV.

Surface Water Treatment Rule (SWTR)

Unfiltered Systems:

A system informed of the requirement to filter before January 1992 that does not install filtration by June 29, 1993.

A system informed of the requirement to filter after December, 1991 that does not install filtration within 18 months of being informed that filtration is required.

A system that has 3 or more major M/R violations in any 12 consecutive months.

Filtered Systems:

A system that has 4 or more treatment technique violations in any 12 consecutive months.

A system that has a combination of 6 violations, including treatment technique violations and major M/R violations, in any 12 consecutive months.

Lead and Copper Rule (LCR)

Initial Tap M/R -- A system which does not M/R as required and does not correct a violation within:

3 months for large systems.

6 months for medium systems.

12 months for small systems.

Optimal Corrosion Control Installation -- A system which fails to install optimal corrosion control on time and has a 90th percentile lead level of 30 ppb in its most recent monitoring period.

Source Water Treatment Installation -- A system which fails to install source water treatment on time and has a 90th percentile lead level of 30 ppb in its most recent monitoring period.

Public Education -- A system which fails to complete public education as required and has a 90th percentile lead level of 30 ppb in its most recent monitoring period.

Notes:

1. A "major" M/R violation (except for SWTR) occurs when no samples are taken or no results are reported during a compliance period. For SWTR, a major M/R violation occurs when less than 90% of the required samples are taken or results reported during a reporting period.

2. A "minor" M/R violation (except for SWTR) occurs when an insufficient number of samples are taken or incomplete results are reported during a compliance period. For SWTR, a minor violation occurs when less than 100%, but more than 90%, of the required samples are taken or results reported during a reporting period.

3. The SV definition is modified by letter, if needed, to cover new regulations as they are promulgated.

4. For details on the SV definition, please see the following memoranda:

a. *Revised Definition of Significant Noncomplier (SNC) and the Model for Escalating Responses to Violations in the PWSS Program*, May 22, 1990.

b. *Final SNC Definition for the TCR and Proposed SNC Definition for the SWTR*, December 19, 1990.

c. *Final SNC Definition for the SWTR*, February 28, 1991.

C. HAZARDOUS WASTE MANAGEMENT

1. Classifications of noncompliance: Violators are classified based on an analysis of the facility's overall compliance with applicable hazardous waste requirements (statutes, rules, permit conditions, compliance agreements, and orders), which includes prior recalcitrant behavior or a history of noncompliance. Two categories of violators are established by EPA enforcement guidance:

a. "Significant Violators" (SVs) are those facilities which have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from statutory or regulatory requirements. The actual or substantial likelihood of exposure should be evaluated using facility specific environmental and exposure information whenever possible. This may include evaluating potential exposure pathways and the mobility and toxicity of the hazardous waste being managed. However, it should be noted that environmental impact alone is sufficient to cause a facility to be an SV, particularly when the environmental media affected requires special protection (e.g., wetlands or sources of underground drinking water). Facilities should be evaluated on a multimedia basis; however, a facility may be found to be a chronic or recalcitrant violator based solely on prior hazardous waste violations and behavior.

b. "Minor Violators" (MVs)¹ are violators which do not meet the criteria listed above for SVs. Minor Violators are typically first time violators and/or violators which pose no actual threat or a low potential threat of exposure to hazardous waste or constituents. A facility classified as an MV should not have a history of recalcitrant or noncompliant conduct. Violations associated with an MV should be of a nature to permit prompt return to compliance with all applicable rules and regulations.

2. For the purposes of tracking timeliness of the lead agency's response, the Discovery Date shall be as defined in Section III.

¹ The *Hazardous Waste Civil Enforcement Response Policy*, March 15, 1996, which is the source of these definitions, utilizes the term Secondary Violator rather than Minor Violator as is employed here. The change in terminology for this Agreement was done specifically to avoid any conflict in the use of acronyms for these terms. Significant Violator and Secondary Violator would both have had the acronym SV.

3. DEQ commits to make a determination as to MV/SV classification within 45 days after the Discovery Date, when a violation is identified. For MVs, the Warning Letter or Violation Letter will be transmitted on the Determination Date. For SVs, the Violation Letter will be transmitted on the Determination Date. In any situation where this required response action for an SV will be delayed, DEQ will communicate the delay as set forth in Section VII.

D. UNDERGROUND STORAGE TANKS

DEQ will use the criteria listed below to determine if the violations discovered at an Underground Storage Tank (UST) facility constitute a Significant Violation (SV).

1. Violations listed as "Major Deviation" and "Major Potential for Harm" in the Matrix Values for Selected Violations of Federal UST Regulations, Appendix A, *U.S. EPA Penalty Guidance for Violations of UST Regulations*, November 1990.

2. Specific UST violations listed in the administrative penalty regulations ARM 17.56.121. A list of the violations is shown below.

The Discovery Date shall be as defined in Section III, except for violations documented by a private sector compliance inspector. Private sector compliance inspectors will normally provide UST owner/operators with a maximum 90-day compliance period to return the UST system into compliance. The Discovery Date for violations documented by a private sector compliance inspector will be at the end of the compliance period.

DEQ will make a determination as to MV/SV classification within 45 days after the Discovery Date and send a Violation Letter or Warning Letter, on or before the Determination Date.

UST Administrative Penalty Regulations, ARM 17.56.121

Failure to notify the department of an UST system
Failure to register an UST system
Failure to report a suspected or confirmed release/spill within 24 hours
Failure to investigate or respond to a release
Failure to temporarily or permanently close an UST system properly
Failure to properly install an UST system
Failure to install release detection or corrosion protection
Failure to provide spill/overfill prevention equipment
Failure to provide automatic line leak detection
Failure to install properly designed and constructed UST system components
Failure to perform release detection
Failure to provide financial assurance
Failure to maintain release detection or corrosion protection equipment
Failure to provide required records within 48 hours of notice
Failure to maintain required records

E. AIR QUALITY / ASBESTOS

5. Definition of Significant Violator (SV) – EPA and DEQ will classify violations/violators pursuant to the criteria in parts a. and b. for air quality and c. for asbestos as described below. To the extent that the violation fits one or more of the elements of the General SV Criteria given in section a. or the SV Matrix given in section b, the violator shall be designated as an SV and the agency's response is subject to the timely and appropriate criteria of Section VII of this Agreement.

a. General SV Criteria – Air Quality

The following criteria trigger SV status. The criteria apply to the pollutant(s) of concern at major sources, (i.e., pollutant for which source is major) except where the criterion itself indicates otherwise (e.g., applies to a synthetic minor source). The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by lead agency.

- i. failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.
- ii. violation of an air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions.
- iii. violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the applicable thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds.)
- iv. violation of any substantive term of any local, state or federal order, consent decree or administrative order.
- v. substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification.
- vi. substantial violation of the source's obligation to submit a Title V permit application. (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)
- vii. violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.

viii. a violation of an allowable emission limit detected during a reference method stack test.

ix. Clean Air Act (CAA) violations by chronic or recalcitrant* violators.

x. substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under CAA Section 112(r) program, limited to source's failure to submit CAA Section 112(r) risk management plan).

*Chronic or recalcitrant violator refers to a source that may stay below the SV threshold but continually violates requirements to the extent that it should be elevated to SV status.

b. Significant Violator Matrix

The matrix below contains specific criteria for assessing whether violations are significant. The matrix is set out in six columns that identify: the violation, the means by which the violation was identified (method of detection), the applicable standard, the supplemental significance threshold, percentage in excess of the reference limit or standard and the time in excess of the reference limit or standard. A discussion of each of these elements of the matrix is set out below. Violations not on the SV List may nonetheless be serious, but will initially be subject to the MV provisions of this Agreement.

Violations and Method of Detection

The first column lists four types of violations addressed by the matrix. The second column identifies six methodologies for detecting the four types of violations listed in the first column. The following shows the four types of violations and the associated method(s) of detecting violations that are reflected in the first two columns of the matrix. Although the matrix provides specific detection methods for violations, nothing in this policy is intended to limit the agency in using other credible evidence to document a violation.

i. Violation of Allowable Emissions Limitations

- a) Reference Method Stack Testing or
- b) Coatings Analysis, Fuel Samples or Other Process Material Sampling

ii. Violation of Parameter Emissions Limitations

- a) Continuous/Periodic Parameter Monitoring

iii. Violation of Applicable Standards (non-opacity)

- a) Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)

- iv. Violation of Applicable Standards (opacity)
 - a) Continuous Opacity Monitoring or
 - b) Method 9 Visual Emissions Readings

Standards

This column identifies the standard(s) for which a violation is being assessed.

Supplemental Significance Threshold

This column provides a supplemental significance threshold (SST) that is to be considered along with the other matrix factors to determine high priority violations. The SST is intended only as a surrogate threshold against which a violation can be judged and obviates the situation that would occur if an emissions limitation was high enough that a less than 15% excursion of the applicable requirement would result in significant environmental impact. The SST is consistent with the level at which a source would be required to obtain a PSD permit for a major modification for the applicable criteria pollutant(s), expressed as an hourly emission rate. The use of an SST is not intended in and of itself to imply that a facility must obtain a PSD permit.

Percent in Excess of Limit/Parameter

This column is the yardstick by which a violation is judged to be a Significant Violation. In some cases (i.e., where the word "FOR" connects this column with the last column), the percent in excess of the limit is paired with a time element. To determine the level of excess emissions for which a violation is considered significant, multiply the applicable standard by the applicable percentage from this column.

Percent of Time in Excess of the Applicable Standard

The percent of time in excess of the applicable standard is based on the operating time of the facility during the reporting period in which the violation was discovered.

VIOLATION	METHOD OF DETECTION	STANDARD	SUPPLEMENTAL SIGNIFICANT THRESHOLD ¹	% IN EXCESS OF REFERENCE LIMIT/PARAMETER		% OF TIME IN EXCESS OF REFERENCE LIMIT
Violation of Allowable Emissions Limitations	Stack Testing	Any applicable requirement		Any violation of the applicable standard		N/A
	Coatings analysis, fuel samples, other process materials sampling or raw/process materials usage reports	Any applicable requirement	CO 23 lb/hr NOx 9 lb/hr SO ₂ 9 lb/hr VOC 9 lb/hr PM 6 lb/hr PM ₁₀ 3 lb/hr	>15% of the applicable emission limitation or the supplemental significant threshold (whichever is more stringent)		N/A
Violation of parameter limits where the parameter is a direct surrogate for an emissions limitation	Continuous/Periodic Parameter Monitoring (includes indicators of control device performance)	Any applicable requirement		>5% of the applicable parameter limit	FOR	>3% of the operating time during the reporting period
					OR	any exceedance of the parameter limit for >50% of the operating time during the reporting period ^d
Violation of applicable non-opacity standard	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	<24 hour averaging period (for example, one hour or three hour blocks)	CO 23 lb/hr NOx 9 lb/hr SO ₂ 9 lb/hr VOC 9 lb/hr	15% of the applicable standard or, the supplemental significant threshold, (whichever is more stringent)	FOR	>5% of the operating time during the reporting period ^e
					OR	any exceedance of the reference limit for >50% of the operating time during the reporting period ^f
Violation of applicable opacity standard ²	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	> 24 hour averaging period		Any violation of the applicable standard		N/A
	Continuous Opacity Monitoring	0-20% opacity >20% opacity		>5% opacity over the limit >10% opacity over the limit	FOR	>5% of the operating time during the reporting period ^g
	Method 9 VE Readings	0-20% opacity		>50% over limit	AND	Any violation of SIP/NSPS limits ^h
		>20% opacity		>25% over limit		

Table Footnotes:

1. Supplemental Significant Threshold is based on PSD significant levels. The significant threshold value is the lb/hr emission rate at 8760 hours which would result in PSD review.
2. Based on the applicable averaging period (e.g. 6-minute block averages).
3. For the first reporting period. If exceedances occur for more than 25 % of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 25% of the operating time during the second reporting period.
4. For the first reporting period. If exceedances occur for more than 3% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 3% of the operating time during the second reporting period.
5. Unless the state or local agency concludes that 1) the cause of the violation has been corrected within 30 days and the source has returned to compliance, or 2) the source was in compliance with an applicable mass limit at the time the Method 9 visual reading was taken.
6. This would not include any federally approved exempt period.

c. SV Criteria -Asbestos

The following criteria generally will trigger Significant Violation (SV) status for violations under the Asbestos Control Act and related regulations. The determination of what is substantial shall be part of a case-by-case analysis/discussion within the department and EPA as applicable.

- i. failure to obtain an asbestos abatement project permit.
- ii. failure to obtain accreditation or employ accredited personnel for an asbestos abatement project.
- iii. substantial violation of the responsibility to comply with the inspection, notification, and work practice requirements of the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS).
- iv. violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining compliance with applicable regulations.
- v. violation of any substantive term of any state or federal order, consent decree or administrative order.
- vi. violations by chronic or recalcitrant violators. (Chronic or recalcitrant violator refers to a situation where single violations stay below the SV threshold but a history or pattern of violations warrant designation up to SV status.)

APPENDIX II - LIST OF EPA ENFORCEMENT RESPONSE GUIDANCE DOCUMENTS

EPA Supplemental Environmental Projects Policy, U.S. EPA, April 10, 1998.

FY 1987 National Guidance for Oversight of NPDES Programs, U.S. EPA, April 18, 1986.

Hazardous Waste Civil Enforcement Response Policy, U.S. EPA, March 15, 1996.

Incentives For Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, U.S. EPA, 60 FR 66706, December 22, 1995.

Noncompliance and Program Reporting by the Director (NPDES), 40 CFR 123.45 (including Appendix A), U.S. EPA, As Amended, May 2, 1989.

NPDES Enforcement Response Guidance, U.S. EPA Region VIII, December 31, 1997.

Office Of Water FY 1994 Program Operating Guidance, U.S. EPA, 1993.

Policy Framework for State/Federal Enforcement Agreements, U.S. EPA, revised August 1986, May 1992, February 1993, and July 1993.

Policy on Compliance Incentives for Small Businesses, U.S. EPA, May 20, 1996.

Policy on Flexible State Enforcement Responses to Small Community Violations, U.S. EPA, November 1995.

The Timely And Appropriate (T&A) Enforcement Response To High Priority Violations (HPVs), U.S. EPA, December 22, 1998.

U.S EPA Penalty Guidance For Violations Of UST Regulations, U.S. EPA, November 1990.

APPENDIX III - LIST OF ACRONYMS AND ABBREVIATIONS USED

AO	Administrative Order
BACT	Best Available Control Technology
CAA	Clean Air Act
CEA	Cooperative Enforcement Agreement
CEM	Continuous Emissions Monitor
CFR	Code of Federal Regulations
CGA	Cylinder Gas Audit
COM	Continuous Opacity Monitor
D&R	Demolition & Renovation
DCI	Direct Compliance Indicator
DEQ	Department of Environmental Quality
DMR	Discharge Monitoring Report
EER	Excess Emission Report
ENFD	Enforcement Division
EPA	Environmental Protection Agency
ER	Enforcement Request
FR	Federal Register
ICI	Indirect Compliance Indicator
LAER	Lowest Achievable Emission Rate
LCR	Lead and Copper Rule
MACT	Maximum Achievable Control Technology
MCA	Montana Code Annotated
MCL	Mean Concentration Limit
MOA	Memorandum of Agreement
MPDES	Montana Pollutant Discharge Elimination System
M/R	Monitoring/Reporting
MV	Minor Violator
NESHAP	National Emission Standards for Hazardous Air Pollutants
NPDES	National Pollutant Discharge Elimination System
NSPS	National Emission Standards for New Sources (or New Source Performance Standards)

NSR	New Source Review
O&M	Operation and Maintenance
PPA	Performance Partnership Agreement
PSD	Prevention of Significant Deterioration
PWSS	Public Water Supply Supervision
QA	Quality Assurance
QNCR	Quarterly Noncompliance Report
RAA	Relative Accuracy Audit
RATA	Relative Accuracy Test Audit
RNC	Reportable Noncompliance
SEP	Supplemental Environmental Project
SIP	State Implementation Plan
SNC	Significant Noncomplier
SST	Supplemental Significance Threshold
SV	Significant Violator
SWTR	Surface Water Treatment Rule
TCR	Total Coliform Rule
TRC	Technical Review Criteria
TTHM	Total Trihalomethanes
U.S.C.	United States Code
UST	Underground Storage Tank
VL	Violation Letter